

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Federal-State Joint Board on)
Universal Service)

NEP Cellcorp, Inc.)

Application for Designation as an)
Eligible Telecommunications Carrier)
in the Commonwealth of Pennsylvania)

CC Docket No. 96-45

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Federal Communications Commission
Bureau / Office

To: Wireline Competition Bureau

**PETITION OF NEP CELLCORP, INC. TO BE DESIGNATED AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

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Dated: June 7, 2007

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NEP Cellcorp, Inc. ("NEP"), pursuant to Sections 214 and 254 of the Communications Act of 1934, *as amended* ("the Act")¹ and by its attorneys, hereby respectfully requests that the Federal Communication Commission ("FCC" or "Commission") designate NEP, a Commercial Mobile Radio Service ("CMRS") carrier, as an Eligible Telecommunications Carrier ("ETC") in the Commonwealth of Pennsylvania.² NEP seeks ETC status for the entire study area of The North-Eastern

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, et seq. ("the Act"); *see* 47 U.S.C. §§ 214 & 254.

² 47 U.S.C. § 214(e)(6).

Pennsylvania Telephone Company ("NE PAT"), a rural telephone company,³ the entire study area of Hancock Telephone Company ("Hancock") in PA, a rural telephone company, the entire study area of Deposit Telephone Company, Inc. ("Deposit") in PA, a rural telephone company, the partial study area of Verizon Pennsylvania, Inc. ("Verizon PA"), a non-rural telephone company, the partial study area of Verizon North, Inc. – Quaker State ("Verizon North"), a rural telephone company, and the partial study area of Citizens Telecommunications Company of NY d/b/a Frontier Communications of NY ("Frontier"), a rural telephone company. As explained below, NEP meets the requirements of the Act and additional requirements adopted by the FCC,⁴ and therefore, the FCC should grant NEP ETC status.

I. NEP's Universal Service Offering

NEP, with principal offices at 720 Main Street, P.O. Box D, Forest City, PA 18421, was granted authority to conduct business in Pennsylvania by order of the Pennsylvania Department of State dated April 30, 1990. NEP is an affiliate of NE PAT. Tim Stearns is the Vice President of Operations of NEP and can be contacted at the above address. NEP has obtained authority to transact business in the Commonwealth of Pennsylvania as set forth in NEP's Articles of Incorporation.

NEP is a small A block licensee providing broadband personal communications service ("PCS") in rural northeast Pennsylvania. NEP has partitioned a portion of T-Mobile's Station WQEW881, MTA 001 New York. Pursuant to the partition, NEP provides service in Susquehanna County with 10 MHz of spectrum based in New York

³ 47 U.S.C. § 153(37).

⁴ *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (March 17, 2005) ("ETC Order").

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REQUESTED ON BEHALF OF NEP

and in Northern Lackawanna and Northern Wayne counties with 20 MHz of spectrum based in Scranton, PA.⁵ NEP intends to obtain Federal high-cost support in order to speed the delivery of advanced wireless services to Pennsylvania's citizens. As an ETC, NEP will also offer a basic universal service package to subscribers who are eligible for Lifeline support. NEP's service offering will be competitive with those of the incumbent wireline carriers. NEP currently provides all the services and functionalities supported by the Federal universal service program, enumerated in Section 54.101(a) of the Commission's Rules, throughout its wireless service area in Pennsylvania. Upon designation as an ETC, NEP will make available to consumers a universal service offering over its wireless network infrastructure, using the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by NEP to serve its existing conventional PCS customers. NEP will provide service to any customer requesting this service within its ETC designated service area.

II. NEP Satisfies All the Statutory and Regulatory Prerequisites for Designation as an ETC

NEP satisfies each of the five elements required for ETC designation by the FCC pursuant to Section 214(e)(6) set forth in the *FCC's Section 214(e) Public Notice*,⁶ as shown below.

⁵ See attached Exhibit A for map of NEP's licensed service area. Pursuant to NEP's partition, NEP currently provides service to only portions of the Springville wire center in Frontier's service area and the Clifford and Forest City wire centers in NE PAT's service area. [REDACTED]

⁶ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997) ("Section 214(e)(6) Public Notice").

A. The PA PUC Has Provided an Affirmative Statement that It Will Not Assert Jurisdiction Over NEP

As a CMRS carrier, NEP is entitled to seek designation as an ETC.⁷ Section 254(e) of the Act, provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.”⁸ Pursuant to 47 U.S.C. § 214(e)(6), the Commission may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”⁹

In the *Section 214(e)(6) Public Notice*,¹⁰ the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a State commission.” In its *Twelfth Report and Order*,¹¹ the Commission stated that where a carrier provides the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the State lacks jurisdiction to perform the designation, the Commission would consider requests filed pursuant to 214(e)(6).¹²

The Pennsylvania Public Utility Commission (PA PUC) has in the past refrained from exercising jurisdiction over CMRS carriers seeking ETC designation, but has not

⁷ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8858-59 (1997) (“*First Report and Order*”).

⁸ 47 U.S.C. § 254(e).

⁹ 47 U.S.C. § 214(e)(6).

¹⁰ *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948.

¹¹ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, *Twelfth Report and Order*, and *Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000).

¹² *In re Federal-State Joint Board on Universal Service, Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 03-754 (March 12, 2003) (“*Farmers MO&O*”).

relinquished its jurisdiction altogether over wireless ETC designations.¹³ The PA PUC has requested that carriers individually seek the PA PUC's approval before filing ETC designation requests with the FCC. Accordingly, on January 11, 2007, NEP filed a letter with the PA PUC requesting whether the PA PUC would assert jurisdiction over NEP's ETC request. In response, the PA PUC, in a letter dated February 26, 2007, concluded that "the Commission does not intend to exercise jurisdiction at this time to consider NEP's petition."¹⁴ Attached is a copy of the PA PUC's letter confirming that the PA PUC will not assert jurisdiction over NEP's ETC request.¹⁵ The PA PUC has clearly indicated that it does not have jurisdiction over NEP, and therefore, cannot designate it as an ETC. Accordingly, NEP hereby requests that the FCC designate NEP as an ETC pursuant to Section 254(c) of the Act.

B. NEP Offers All of the Services Supported by the Federal High-Cost Universal Service Program

In order to be designated as an ETC, a carrier must be a common carrier and must offer and advertise the supported services throughout the designated service area.¹⁶

Section 254(c) of the Act and Section 54.101 of the FCC's Rules establish "core" or

¹³ See *Federal State Joint Board on Universal Service, Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Order ¶ 10, DA 04-2667 (August 25, 2004).

¹⁴ See attached Exhibit B.

¹⁵ See attached Exhibit B.

¹⁶ 47 U.S.C. § 214(e)(1).

designated services that are supported by Federal universal service support mechanisms.¹⁷ These core services include:

1. voice grade access to the public switched network;
2. an amount of local usage free of (additional) charge;
3. Dual Tone Multi-Frequency signaling or its functional equivalent;
4. single party service;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation services for qualifying low-income consumers on at least one calling plan.

NEP offers the entire required “core” services listed above.

According to the *Section 214(e)(6) Public Notice*, a certification that the carrier provides each of the supported services is required.¹⁸ As shown below and in the attached Declaration,¹⁹ NEP provides the required services.

1. Voice-grade Access to the Public Switched Telephone Network.

The FCC has concluded that voice-grade access means the ability to make and receive phone calls, with a minimum bandwidth of 300 to 3000 hertz.²⁰ NEP meets this requirement by providing voice-grade access to the public switched telephone network.

¹⁷ See 47 U.S.C. § 254(c); 47 C.F.R. §54.101.

¹⁸ See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948.

¹⁹ See attached Exhibit C.

²⁰ See *First Report and Order*, 12 FCC Rcd at 8810-11.